IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 5497 of 2007()

OR 7/07 OF PLACHERRY FOREST STATION

PETITIONERS

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1. T.R.SOMAN, AGED 54 YEARS,
   S/O RAGHAVAN, THAINIYAL HOUSE,
   ERUMELY SOUTH VILLAGE,
   PUNCHAVAYAL, PAKKANAM.

2. SABU ALSO KNOWN AS GOWRY SABU,
   AGED 30, S/O GOWRY, ANIKKAD VEEDU,
   PAKKANAM.

3. ANANDAN, S/O LATE PURUSHAN,
   AGED 30, THYNIYIL HOUSE, PAKKANAM.

4. SASINDRAN @ KUNJUKOCHU,
   AGED 28, S/O KUNHAPPAN, MANDHARA HOUSE,
   ERUMELY SOUTH VILLAGE,
   PUNCHAVAYAL, PAKKANAM.

BY ADV. SRI.K.A.HASSAN

RESPONDENTS:

FOREST RANGE OFFICER,ERUMELY,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5497 of 2007

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Dated this the 3rd day of October, 2007

O R D E R

Application for anticipatory bail. The petitioners apprehend arrest as accused in O.R. 7 of 2007. The petitioners have been arrayed as accused in two cases under the Kerala Forest Act. They are O.R.Nos. 7 and 8 of 2007. In O.R. 8 of 2007 they have been granted regular bail. They surrendered before the learned Magistrate consequent to a direction issued by this Court. Before the learned Magistrate they had sought regular bail in O.R. 7 of 2007 also. But the learned Magistrate took the view that the petitioners have not been formally arrayed as accused in O.R.7 of 2007 and therefore their application for regular bail cannot be considered.

2. The petitioners in these circumstances had come to this Court. According to the petitioners, the respondents are making attempts to arrest them in O.R.No. 7 of 2007, but they are not filing any report before the learned Magistrate. Consequently the right of the petitioners to surrender before the learned Magistrate and seek regular bail is affected. In these circumstances appropriate directions

to the learned Magistrate or directions under Section 438 Cr.P.C. may be issued granting anticipatory bail to the petitioners in O.R. 7 of 2007, it is prayed.

3. Notice was given. The learned Prosecutor submits that on account of an unintended error a common report was filed in O.R.Nos. 7 and 8 of 2007 on 7.9.2007. The learned Magistrate had reckoned the said report as one relating to O.R. 8 of 2007 alone and that is why the petitioners' prayer for grant of regular bail was not considered by the learned Magistrate. Subsequently, to clarify the matter and to cure the defect, a report dt.1.10.2007 has been filed before the learned Magistrate to array the petitioners as accused in O.R. 7 of 2007 specifically. In these circumstances the petitioners may be directed to surrender before the learned Magistrate and seek regular bail as they have done in O.R. 8 of 2007.

4. The learned counsel for the petitioners submits that the petitioners shall be satisfied if such report has already been filed. They may be permitted to surrender and seek regular bail, it is prayed.

5. This petition is, in these circumstances, allowed in part. The submission of the learned Prosecutor that a report dt. 1.10.2007 to array the

petitioners as accused in O.R. 7 of 2007 of Plachery Forest Station is accepted. It is observed that the petitioners must surrender before the learned Magistrate and seek regular bail in the ordinary course. If the petitioners appear before the learned Magistrate as accused in O.R.No. 7 of 2007 and apply for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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R. BASANT, J.

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B.A.No. 5497 of 2007

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Dated this the 18th day of September, 2007

O R D E R

The learned counsel for the petitioner submits that though he had offered to surrender before the learned Magistrate to seek bail in O.R. 7 of 2007 of Placherry Forest Station, the said request was not considered favourably by the learned Magistrate for the reason that the petitioner is not shown as an accused in the said forest crime so far. The learned Prosecutor asserts that the petitioner is an accused in that case. Has any report to that effect been filed before the learned Magistrate? When was such report filed? What order, if any, has been passed by the learned Magistrate in such report? These details shall be furnished to this Court by the learned Prosecutor by 25.9.2007. Call on 25.9.2007. The learned Prosecutor undertakes that the petitioner shall not be arrested till that date.

(R. BASANT)
Judge

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